

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

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AGENDA

Supreme Court's Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114-0241

February 16, 2005

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| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger |
| 2. | RULE 23B | Matty Branch |
| 3. | RULE 24 | Matty Branch |
| 4. | RULE 58 | Matty Branch |
| 5. | OTHER BUSINESS | |
| 6. | ADJOURN | |

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

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MINUTES

**Supreme Court's Advisory Committee
on the Rules of Appellate Procedure**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

February 16, 2005

ATTENDEES

Marian Decker
Larry Jenkins
Margaret Lindsay
Judge Gregory Orme
Clark Sabey
Kate Toomey
Fred Voros
Joan Watt

EXCUSED

Matty Branch
Brian Pattison
Karra Porter
Clark Nielsen
Todd Utzinger
David Lewis

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger was not at the meeting, and therefore Fred Voros conducted. Fred Voros welcomed the Committee members to the meeting. Judge Gregory Orme moved to approve the minutes of the October meeting. Kate Toomey seconded the motion. The motion carried unanimously.

II. RULE 23B

Judge Russell Bench had submitted two proposals concerning Rule 23B. Judge Bench had suggested that Rule 23 be amended to include child welfare proceedings. He also suggested a different time line during which a Rule 23B motion must be filed, because some parties were using 23B motions for the purpose of delay.

Fred Voros stated that he had talked with Carol Verdoia about expanding the rule to include child welfare proceedings. Ms. Verdoia had suggested inviting her, Martha Pierce and a representative of the parent's defense to address the Committee. Kate Toomey stated that her office receives many complaints related to ineffective assistance of counsel claims, but she has never seen one in the child welfare arena. Joan Watt suggested that this may be because the clientele is not as likely to complain. After brief discussion, the members agreed that the Committee should invite Carol Verdoia, Martha Pierce and Lisa Lokken to the next meeting to discuss the issue.

Fred Voros agreed with Judge Bench's assessment that some practitioners use 23B as a means to obtain an extension. Joan Watt stated that 23B investigations take time and strict time frames may create problems. She questioned whether the abuses were wide-spread. Ms. Watt suggested perhaps eliminating the automatic response by the state. She stated the court could ask for a response from the state only if they felt it necessary. Mr. Voros stated that this could result in even more delay. Judge Orme stated that many Rule 23B motions are resolved based on the state's response.

Judge Orme suggested tying the time line to the filing of a transcript and that the briefing schedule would continue pending resolution of the motion. Margaret Lindsay and Joan Watt stated that this would be too difficult to manage. Mr. Voros suggested changing the rule to require the filing of a brief within ten days after a Rule 23B motion is denied. Ms. Watt stated that this might be reasonable as long as a litigant could still request an extension. Judge Orme stated that for those Rule 23B motions that are granted, the case could run its course because then the 23B filing would not be considered abusive. Ms. Watt suggested leaving the rule as it is and the court could set its own deadlines. Judge Orme stated that this would require a letter from the court in each case notifying the party to keep working on the brief because it may need to be filed soon after the 23B motion is resolved. After brief discussion, Clark Sabey agreed to draft a rule proposal that incorporated the Committee's discussions.

IV. RULE 24

Matty Branch had distributed a rule proposal which would create a presumption against granting page length extensions. Fred Voros suggested creating a shorter page limit for Court of Appeals' cases. The Committee members rejected the suggestion. Joan Watt expressed concern with the language in the rule that would require a motion for extension to be filed seven days before the brief is filed. Ms. Watt stated that there are often circumstances in which they work hard to meet the page limit, but are unsuccessful and need to file a request at the last moment.

Larry Jenkins suggested revisiting the Committee's position on a word count limit. Mr. Jenkins stated that a word count might help to resolve part of this issue. The Committee members agreed that a word count was worth looking at, but probably would not resolve the immediate issue. Mr. Jenkins will present a word count proposal at the next meeting. Marian Decker stated that the rule should include some type of time limit and suggested three days. Larry Jenkins agreed that usually a party will know in advance whether they will be able to meet the page limit. Mr. Jenkins suggested that the rule state that if a motion is filed within seven days of the due date of the brief, the motion include a draft of the brief. The Committee members agreed that this is a good suggestion. Fred Voros asked whether there should be a rule change increasing the page limit for death penalty cases. The Committee members did not think it was necessary. Mr. Voros also suggested including language dealing with reciprocity - when the court grants a request for additional pages, the same ruling applies to the other side. The Committee members agreed that this would be a good suggestion. Marian Decker agreed to draft proposed language consistent with the Committee's discussion.

V. OTHER BUSINESS/ADJOURN

The Committee members agreed to discuss the Rule 58 proposal at the next meeting. The next meeting was scheduled for March 16, 2005. The Committee adjourned at 1:30 p.m.